Supreme Court, U.S.
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IN THE

Supreme Court of the United States

NICOLAS S. LAURENT
et, al.,

Petitioners,

v.

SELECT PORTFOLIO SERVICING INC.,
FORMERLY KNOWN AS FAIRBANKS
CAPITAL CORPORATION
NANCY N. HERKERT, CHAPTER 13 TRUSTEES
et, al.,

Respondents,

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether Court of Appeals abused its discretionary system by affirmed on July 18, 2006, the District Court order dated November 18, 2005, denying Petitioner Motion for Leave, filed timely, in the Bankruptcy Court, pursuant to Rule 8002 (a); and when creditor Select Portfolio Servicing Inc., formerly known as Fairbanks Capital Corporation have Permanent Injunction prohibit from commit deception foreclosure. Pet. App. 1a-5a.

2. Whether Respondent, Select Portfolio Servicing Inc., formerly known as Fairbanks Capital Corporation can violated District Court Order permanent Injunction for 5 years, signed by Honorable Judge Douglas P. Woodlock, in the District Court of Massachusetts, on November 21, 2003, for deception, misleading foreclosure actions, in case # 03 -12219 -DPW, and 03- 10895- DPW.

3. Whether United States Court of Appeals for Eleventh Circuit can insert a stranger name as Petitioner in the ruling denying Petition for Rehearing and Petition for Re Hearing en banc, on September 18, 2006, .Pet. App. 6a.

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

Petitioners are Nicolas S. Laurent, Sandra Laurent et, al.,
Respondent are Select Portfolio Servicing Inc., formerly known as Fairbanks Capital Corporation
Nancy N. Herkert, Chapter 13 trustee.
et, al.,

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issues to review the judgment below.

OPINIONS BELOW

The opinion of the court of Appeals, .App. 1a-5a -is not reported. and the court subsequently deny a petition for rehearing on September 18, 2006, filed timely. App. 6a.

JURISDICTION

The Judgment of the Court of Appeals entered on July 18, 2006. Pet. App. 1a-5a, subsequently Petition for Rehearing denied on September 18, 2006.

On December 19, 2006, Supreme Court of the United States extended the time for filing the Petition of Writ of Certiorari to February 19, 2007. On March 16, 2007, Supreme Court of the United States extend further the time within which to file a petition for a writ of certiorari to and including May 16, 2007.

The Jurisdiction of this Court is invoked under 28 U. S. C. § 2101 (C) and 28 U. S. C. § 1254 (1).

STATUTORY PROVISION INVOLVED

XIV Amendment - No states shall make or enforces any law which shall abridge the privileges or immunities of the United States, nor shall any states deprive any person of life, Liberty, or property without due process of the law, nor deny to any person within the jurisdiction equal protection of the law.

STATES AND REGULATIONS:

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15 U. S.C. § 1692 a (6), 15 U. S. C. § 44 15 U. S. C. § 1692 t, 15 U.S. C. § 1692 e (10)/15 U. S. C. § 1692e (8),

STATEMENT OF THE CASE

Nature of the Case, Course of Proceeding and the Disposition below:

Petitioner files this Petition for Writ of Certiorari to the Supreme Court of the United States to review and vacate the order deny petition for rehearing filed on September 18, 2006, and affirmed on July 18, 2006, render in the Court, of Appeals for Eleventh Circuit Atlanta Georgia. App. 1a-5a.

Court of Appeals erred insert a stranger name as Petitioner, in the ruling deny petition for rehearing made on September 18, 2006. App. 6a.

The order made in the Court of Appeals case Number 06-10802-CC, on July 18, 2006, and on September 18, 2006, did not signed by a judge. Rule 74. 01 (a), 74. 02, and administratively ruled 4, 09 (6), which require that the judgment, and orders, be in writing, signed by a judge.

On September 18, 2006, the three Judges in the Court of Appeals failed to signed the ruling; Slay v. Slay, 965 S. W. 2d at 845, the Missouri Supreme Court has clearly upheld, and the plain of the rules deciding orders not signed by Judges are Void. Pet. App. 6 a.

Supremacy Clause of the United States which provides That the law of the United States Constitution is the Supreme law of the land no withstands any state law.

On November 18, 2005, U. S. District Court, judge Cecilia M. Altonaga court erred in the Final dismissal case closed, deny Petitioner Laurent's motion for leave accompany Notice of Appeal filed timely on July 5, 2005, in the bankruptcy Court to the United States District Court., within 10 days of the bankruptcy court's order, which states that a Notice of Appeal, pursuant to Rules 8002(a), must be filed within 10 days of the date of the entry of the order appealed from, which petitioner Laurent comply, with the bankruptcy rules of

appellate procedure. App. 7b-14b.

The timely filing of a Notice of appeal is mandatory and jurisdictional. If the notice is not timely filed, the appellate court is without jurisdictional to hear the appeal.

U. S. District Court has jurisdiction to hear Mr. Laurent appeal filed timely.

U. S. District Court abused its discretionary system in the order render on November 18, 2005, failed to insert the name of Respondent, Select Portfolio Servicing Inc, formerly known as Fairbanks Capital Corporation name as a party in the Final order dismissal case closed, case # 05-22101, CV-CMA, since Petitioner's notice of Appeal clearly indicates that Select Portfolio Servicing Inc., formerly known as Fairbanks Capital Corporation is the first party.

On August 2, 2005, the U. S. bankruptcy court grant Petitioner transmittal motion for Leave to appeal to U. S. District **court** Southern District of Florida. App. 23c-24c. Thereafter, Petitioner Laurent filed Initial Brief, in the District Court and sent a copy to Select Portfolio Servicing Inc, formerly known as Fairbanks Capital Corporation, and to Ms. Nancy N. Herkert, Chapter 13 trustee.

Subsequently, on November 18, 2005, Judge Cecilia M. Altonaga made final order dismissal deny petitioner notice of Appeal. Thereafter, Petitioner filed Motion to Alter or Amend the Final dismissal order, which the district Court denied on January 11, 2006.

Finally, on January 19, 2006, Petitioner filed Notice of Appeals to Court of Appeals for the Final dismissal render in the district court.

On October 10, 2000, Petitioner, Nicolas S. Laurent filed voluntary Petition under Chapter 13, reorganization payment plan of Title 11, in the U. S. Bankruptcy Court Southern District of Florida, and retained three Bankruptcy attorneys, Michael A. Frank, Michael J. Brooks and Rodolfo de La Guardia to represent and

filed on behalf of Petitioner Laurent a Chapter 13 payment plan, in case Number: 00-50881 BKC - PGH- to paid the creditors, including the mortgage company EquiCredit Corporation of America, and the property tax, for the homestead residential property, inside the chapter 13 payment plan, for 5 years term, monthly payment, at 18 % interest rate, the plan confirmed by Ms. Nancy N. Herkert, Chapter 13 trustee, and the creditors, as well as U.S. bankruptcy Court.

Thereafter, **on March 8, 2002**, EquiCredit Corporation of America sent Petitioner Laurent notice of Assignment, transfer or sell the mortgage to Fairbanks Capital Corporation, indicated the sale or transfer will be effective on April 1, 2002. App. 18c-19c.

Fairbanks Capital Corporation, a creditor that received payment every month, inside the chapter 13 payment plan, effective April 1, 2002. App. 18c-19c.

Mr. Laurent complying with the term and condition of the payment plan, to made his payment inside the chapter 13 payment plan, to Ms. Nancy N. Herkert, trustee to paid tthe creditors, inside the payment plan.

From October 10, 2000, to December 10, 2002, former bankruptcy attorney Michael J. Brooks, Chapter 13 payment plan, on behalf of Petitioner Laurent demonstrated that Petitioner paid $ 2, 077.70, per month, inside the chapter 13 plan, total amount paid for 26 months $ 54, 020. 20. Thereafter on December 2002, Petitioner Laurent retained a different bankruptcy attorney name Jared J. Kullman, after the resignation of the three previous chapter 13 bankruptcy attorneys; On or about January 2003, former attorney Jared J. Kullman, Chapter 13 plan, on behalf of Laurent demonstrates, from January 10, 2003, to December 10, 2003, Petitioner, paid **$ 2, 410. 69, per month, total paid $ 24, 106.** 90, plus $ 54, 020. 20, from former attorney Michael J. Brooks

payment plan, total amount payment made to respondent, Herkert $ 78, 127. 10, dollars.
Consequently, Respondent, Nancy N. Herkert trustee failed to credit Petitioner Laurent, more than $ 24, 106. 90, payment received inside Chapter 13 payment plan.

Thereafter on November 10, 2004, Respondent, Nancy N. Herkert, Chapter 13 trustee, filed Notice of Deposits of Balance funds, in the U.S. bankruptcy court, $ 4, 681.64, out of $ 24, 106. 90 failed to credit Petitioner inside the chapter 13 payment plan, case number 00-50881-BKC, which is still in the court Registry as of today. App. 25c.

Now, the remaining balance is $ 19, 425, 26, which respondent, Nancy N. Herkert, and the Bankruptcy court failed to credit, Petitioner inside the Chapter 13 payment plan.

On January 7, 2004, Chapter 13 payment plan, case dismissed, according to Ms. Nancy N. Herkert, trustee, for lack of document, not for payment. **Subsequently,** Petitioner Laurent called Ms. Nancy N. Herkert, trustee office, to verify what kind of document needed to vacated the dismissal, but Respondent. Herkert refused to spoke to Petitioner Laurent, in the telephone. Finally Ms Herkert's secretary indicated to Mr. Laurent, that Respondent, Nancy N. Herkert preferred to spoke to petitioner's attorney Jared J. Kullman, regarding the dismissal.

Mr. Laurent called and went to the attorney office, but unable to located attorney Jared J. Kullman.
Finally, Petitioner located attorney Kullman, who indicated to Petitioner, Laurent his father passed away, and that is the reason his office, was closed temporarily, and indicated he will contacted and worked with the trustee to verify what kind of document needed to resolved this matter, and to vacated the dismissal, as soon as possible.

On January 2004, attorney Jared J. Kullman filed

Motion to vacated the dismissal on January 7, 2004.

Thereafter, on February 2, 2004, former attorney Kullman filed second motion to vacated the order of dismissal, indicated for lack of document.

Subsequently, on February 2, 2004, Petitioner filed Motion for automatic Stay of execution & suspend proceeding for all the creditor action, granted by bankruptcy Judge Paul G. Hyman.

Consequently, on February 5, 2004, bankruptcy court Order Setting Motion for Automatic Stay for March 1, 2004, at 9: 30, in Ft. Lauderdale. - —

On March 1, 2004, Petitioner Laurent went to the notice of Hearing, for Motion for automatic stay, Respondent, Nancy N. Herkert, trustee, and the creditors failed to appeared for the Notice of hearing, and Judge Paul G. Hyman, granted the motion up to April 2004.

Respondent Nancy N. Herkert dismissed Petitioner, Laurent chapter 13 payment plan on several occasions, and refused the payment plan to work, in a normal course, in order to conceal the fraudulent transfer made in petitioner's Guardian home property taxes, without relief from automatic Stay, from revealing.

On January 2004, to April 2004, Petitioner Laurent comply, by contacted and sent affidavit letter to Fairbanks Capital Corporation, now change its name to Select Portfolio Servicing Inc., and offered to made the payment directly to Fairbanks, in so many occasions, but Fairbanks Capital Corporation mortgage loan company refused and failed to comply, with Petitioner request.

On March 17, 2004, Fairbanks Capital Corporation conspire with another company name U.S. Bank National Association, etc, to initiate a false allegation deception foreclosure action, on Petitioner's residential homestead exemption property, without service of process, to petitioner Laurent and wife for the Summons, Complaint, the Summary Judgment, and Final Judgment, and made a

Mr. Nicolas S. Laurent Affirmative Defense, to object the foreclosure action, recorded on Harvey Ruvin Official BK 22371 PG 3513, in Dade County Miami, Florida.
On July 1, 2004, Fairbanks Capital Corporation change its name to Select Portfolio Servicing Inc.

The State Court, Eleventh Judicial Circuit Court Judge Marc Schumacher had ample opportunity to request U. S. Bank relief from the automatic Stay, in case Number 00-18954 CA- (09) before initiated the foreclosure action, in Petitioner's residential property, without relief from Stay.

On April 14, 2005, **the bankruptcy court and** Respondent, Nancy N. Herkert, closed Petitioner chapter 13 case, and discharge the trustee premature, on April 19, 2005, when petitioner Laurent had a case pending in the Court of Appeals, case number 04-16182-HH.

On April 21, 2005, U. S. Bank National Association conspire with Fairbanks Capital Corporation, now known as Select Portfolio Servicing Inc., to foreclosed on Petitioner's residential homestead exemption property, without relief from automatic Stay.

Thereafter Petitioner filed Objection in the State Court, Eleventh Judicial Circuit Court on April 21, 2005.

Consequently, on May 2, 2005, in the Order Reopened the Chapter 13 case, Judge Raymond B. Ray indicated "that the bankruptcy court made clerical mistake, by closed Petitioner chapter 13 case premature, on April 14, 2005, and discharge trustee, on April 19, 2005, in the ten days entry of the Automatic stay, pursuant to Rule 8002(a), to allow Petitioner to prosecute". App. 15c.

On May 5, 2005, Petitioner Laurent filed Motion to Stay pending appeal to the Court of Appeals.
Subsequently, on May 13, 2005, Select Portfolio Servicing Inc., formerly known as Fairbanks Capital Corporation rushed to filed Motion for retroactive Stay declared that it hold the note, and mortgage to Petitioner

Laurent residential property, and need expedite order for the foreclosure action on April 21, 2005, to proceed.

Respondent, Select Portfolio Servicing Inc., formerly known as Fairbanks Capital Corporation is not entitle to retroactive stay; since Fairbanks Capital Corp, a creditor inside the chapter 13 payment plan, knowing fully that petitioner Laurent, a debtor inside the chapter 13 payment plan. Fairbanks which now change its name to Select Portfolio Servicing Inc., had ample opportunity to requested relief from automatic Stay, before initiated the foreclosure action, on Petitioner's property. App. 20c-22c.

Thereafter, on May 18, 2005, Petitioner Laurent filed objection to Select Portfolio Servicing Inc., Motion, indicated U.S. Bank National Association etc, attorney Denise Rosenthal never mention Select Portfolio Servicing Inc., formerly known as Fairbanks Capital Corp., as a party in the lawsuit, filed in the Eleventh Judicial Circuit Court, Dade County, Miami, Florida, U.S. Bank National Association v. Nicolas S. Laurent and wife Sandra.

On May 27, 2005, the bankruptcy court granted Petitioner Laurent Transmittal Motion for Leave to appeal to District Court, order discharge trustee, case closed, render on April 19, 2005.

Subsequently, on June 15, 2005, the bankruptcy Court Judge Raymond B. Ray abused its discretion, granted Select Portfolio Servicing Inc., Motion for Declaration the automatic Stay is not in effect. App. 16c-17c.

On June 15, 2005, the bankruptcy court Lack of jurisdiction over the subject matter, and Lack Jurisdiction over the person, since Petitioner Laurent already granted, in the Bankruptcy court Transmittal Motion to Leave on May 27, 2005, to United States District court.

Respondent, Nancy N. Herkert, has tendency to failed to object to any creditors violation, in Petitioner

Chapter 13 payment plan, Automatic Stay.
Respondent, Nancy N. Herkert, trustee is incompetent, and unwilling to perform the duties of a trustee. In panel reviews of law de Novo under Kashani, and In re Cochise College Park 703 F. 2d 1339 (9th Cir. 1983 on which the panel in Kashani relied, the trustee, and her staff are not immune from suit alleged negligent action that amount in violation of those duties.

The bankruptcy court abused its discretion in the order made on April 19, 2005,discharge the trustee premature, in the entry of the automatic stay; and judge Raymond B. Ray erred in the order made
on June 15, 2005, and on June 23, 2005, since Petitioner already had stay in effect, filed on May 5, 2005, in the bankruptcy court, which Judge Raymond B. Ray never deny until July 23, 2005.

A. The Respondent Fairbanks Capital Corporation etc., several U. S. Lawsuit:

United States of America vs. Fairbanks Capital Corp., etc case No 03- 12219 –DPW.
Alanna L. Curry, Marlene L. Brenes, and Thomas O White. Fairbanks Capital Corporation case No. 03 -10895 DPW. Paul J. Alexander, Jr. et al v. Fairbanks Capital Corp. et al; 03-027 Delores Alsbrook v. Fairbanks Capital Corp 2:03- CV-02386(R K), Philadelphia County Court of Common Pleas, A.

Marc A. Bradley, et al v. Fairbanks Capital Corp, et al; 02- 7 C-7786, ND. lll. Allan R . Brause v. Fairbanks Capital Corp. 13C-03-55637, Md .Charles & Bernadette Chatman v. Fairbanks Capital Corp.; No. 02-665, N. D. III.

B. The District Court Permanent Injunction:

Gregg S. Ahrens, attorney for Select Portfolio Servicing Inc., abused the legal system knowing fully that Select Portfolio Servicing Inc., the company it represent have a permanent court injunction in the lawsuit filed in the

district court of Massachusetts on November 12, 2003, and signed by the Judge on November 21, 2003, prohibit Fairbanks Capital Corp. from committing deception misleading foreclosure case #: 03- 12219- DPW, and 03-10895 DPW. Select Portfolio Servicing Inc., and U.S. Bank National etc violates the Automatic Stay, with malicious intent, in bad faith knowing fully that petitioner, a debtor inside the Chapter 13 bankruptcy court payment plan, before initiate this action.

An order terminating the Automatic Stay permits a party to re initiate, or start another one, after the termination order is entered, but does not effect the status of actions taken between the filing of the bankruptcy petition and the entry of the termination order, such action are void ab initio. Eastern refractoriness Co. Inc. v. Forty Eight Insulations Inc., 157 F. 3d 169 (2d Cir. 1998).

18.U S.C.§ 3057(a): Any trustee having reasonable grounds for believing bankruptcy crimes has been committed or that an investigation should be held in connection therewith shall report to the appropriate U. S. Attorney all the facts and circumstance.

. District Court of Florida is in conflict with the U.S. District Court of Massachusetts who entered permanent Court **Injunction** for five years, against Fairbanks Capital Corporation, it agents, employees, prohibit from committing deception, misleading foreclosure, case #: 03-12219 - DPW, and case # 03 -10895 DPW.

Bankruptcy Court Southern District of Florida is in conflict with U.S. District Court of Massachusetts, since Select Portfolio Servicing Inc., formerly known as Fairbanks Capital Corporation has a permanent Court Order Injunction for five years case # 03 -12219, in the District Court of Massachusetts, signed by the judge on November 21, 2003, for violations, deception in mortgage foreclosure, effective as of today.

U. S. District Court judge Cecilia M. Altonaga erred in the order of Final dismissal, Case closed, failed to vacated the bankruptcy court order on June 15, 2005, which according to Bankruptcy Judge Raymond B. Ray, in the order on May 2, 2005, acknowledge that the bankruptcy court made clerical mistakes, closed petitioner chapter 13 case premature, on April 14, 2005, in the entry 10 days of automatic stay, Pursuant to rules 8002 (a),**and Rules 62 (a)** App. 15c.

Eleventh Judicial Circuit Court Judge Marc Schumacher in conflict with bankruptcy Rules of automatic stay.

On October 1, 2004, Default enter against U.S. Bank National Association etc, by the Deputy Clerk, in the state court, Third District for failure to answer Petitioner, Counterclaim serve by a sheriff.

Fairbanks Capital Corporation charged with imposing and collecting unnecessary and excessive fees, and charge not authorized by law, failing to properly and or timely credit customer's payment to their accounts., charging borrowers improper late fees, engage in conduct that violates state and federal consumer protection.

Each state or commonwealth where Fairbanks does business has a law that prohibits Unfair and Deceptive Acts and Practices ('UDAP laws). In Rufus Rhine V. M. E. Montgomery, magistrate Judge of Scott County, Missouri 422 S. W. 2d 661. It was decided that any kind of proceeding to cancel a void judgment is proper, and it is the duty of this court to declare the order void as a matter of law.

This bright line test is that judgment or orders must be in writing and signed by the judge.

Missouri Supreme Court recently explained in city of Saint Louis v. Hughes, 50 S. W 2d 850 (M O. Banc

1997}, that Rule 74. 01 (a) defines what constitutes a judgment.
The rule, which was amended on 1995, states (a) Judgment is entered when a written order signed by the judge and denominated judgment is filed.

Respondent, Nancy N. Herkert abused Petitioner, rights inside the chapter 13 payment plan, failed to object, and allowed, the creditors to committed violations in the Automatic Stay.

A void judgment is entitle to no consideration, and is void forever { It is as if the act never occurred, and therefore isn't subject to any statute of limitations or waiver or collateral estoppels.

Court of Appeals for Eleventh Circuit is also in conflict with its own rules in 1982.
"Borg Warner Acceptance Corp. v. Hall 685 F. 2d 1306 (11th Cir. 1982.
18U. S. C. Section 157, Select Portfolio Servicing Inc., formerly known as Fairbanks Capital Corporation made intrinsic fraud conspire with U. S. Bank National Association etc., in a relation to a proceeding under Title 11, for the purpose of carrying out a fraudulent schemes.

Bryson 131 F. 3d 601, 38 Collier Bankr. Cas 2d B 1673, 38 FED, R, SER V. ETC, the Bankruptcy Court has authority under § 105 to sanction an attorney who has acted unreasonably and vexatious.

Chambers v. Goldberg, Inc., 501 U. S. 32 111 S Ct 2123 (1991) Federal Judges have an inherent power to punish parties, and attorney in contempt.

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[1] Whether the United States Bankruptcy Court abused its discretionary system, by violated ten days statue limitation of time pursuant to Rule 8002(a), to allowed petitioner Laurent in the chapter 13 payment plan, the opportunity to respond after the entry of the order closing the Chapter 13 case, on April 14, 2005, and discharge the trustee, on April 19, 2005, without service of process to Petitioner

Respondent, Select Portfolio Servicing Inc., failed to comply with the terms and condition of the ten days writing Notice, in the promissory note, to requested payment, before initiate any action against Laurent property, without relief from Automatic Stay.

Creditor Fairbanks Capital Corporation failed to contacted Petitioner Laurent, former bankruptcy attorney Jared J. Kullman, to requested mortgage payment, as required by the ten days notice, in the promissory note contract, before initiate the foreclosure action, in the property, described above.

Respondent, Nancy N. Herkert and former attorney Jared J. Kullman never indicated to Mr. Laurent there is a foreclosure action in his residential property.

The Bankruptcy Court and the State Court, Eleventh Judicial Circuit abused its discretion by initiated foreclosure, action, on Petitioner's homestead property, when the automatic Stay was active, in full effect, on April 21, 2005, in the property described as:

Lot 10, in Block 1, of Lake Side Manor, according to the Plat thereof as recorded in Plat book 55 of the Dade County, Florida folio # 30-2127-014-0100.

The filing of an action, in violation of the automatic Stay, provision of Section 362(h) of the Bankruptcy Court is void. The Automatic Stay gives the debtor protection from his creditors; include foreclosure action, beginning collection calls, Repossession, Garnishment or levies, and precludes creditors from enforcing pre- petition judgment against debtor; Anyone who willful violates the stay, in a case of an individual is liable for punitive damages. In a chapter 13 the stay remain in effect, for the life of the chapter 13 payment plan. For example, when the debtor gets a discharge, the Automatic Stay, replaced by permanent injunction prohibiting creditors from all those action.

Any Action in violation of the Stay has no legal effect; A judgment rendered during the pending of automatic Stay is Void, and annul, because it constitutes the exercise of judicial discretion, in violation of the automatic Stay. Void is defined as annul, nugatory, having no legal effect, unable in law to support the purpose for which it was intended. Fairbanks Capital Corporation now known as Select Portfolio Servicing Inc., received permanent Injunction order, in the lawsuit filed **on November 12, 2003**, in the United States District Court of Massachusetts, Case Number: 03- 12219 -DPW, signed by the Judge on November, 21, 2003, which indicated that it is further order, that for five years, after the date of entry of this order that Fairbanks Capital Corporation hereby permanently restrained, and enjoined in connection with the servicing of any loans, from assessing and or collecting as follows:

In connection, with the collection of any debt in violation of **Section 807 of the FDCPA, 15 U. S. C. § 1692 (e)**, including but not limited to (1) false representing the character amount or legal status of a debtor any services receives rendered or compensation, which may be lawfully received by a debt collector for collection of a debt, in violation of Section (807) (2) (A). B. Fairbanks Capital Corporation prohibits from using any unfair means to attempt to collect a debt.
C. prohibit from using false deceptive, or misleading representation or means, prohibits from taking any action been the subject of any legal practices and investigate, and resolve any consumer disputes.

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[2] The majority of the Federal Circuit Court has determined that the automatic Stay imposed by the Federal Bankruptcy Code divest a State Court of Jurisdiction to adjudicate claims against the debtor Cohen v. Salata 303 App. 3d.

D. prohibits from failing to notify consumer of the right to dispute, and obtained verification of the debt, and also prohibit from violating the FDCPA, the FCRA, and the RESPA.

18. U.S.C.§ 362, Respondent Select Portfolio Servicing Inc., formerly known as Fairbanks Capital Corporation always gives the wrong pay off, instead add unwarranted fees, and charge not authorized, by law.

11.U. S .C. 704- Respondent Herkert failed to accountable for all property received from Petitioner, failed to examine proof of claim, and failed to object to the allowance of any claim, that is improper.

The foreclosure on Petitioner's residential property, is still pending in disputed, in the state court, Eleventh Judicial Circuit Court Dade County, West Flagler, Miami Florida.

Thereafter, on July 11, 2006, Notice of Hearing and Motion for foreclosure filed in the State Court, Eleventh Judicial Circuit, Dade County, Miami, Florida, case Number: 00-18954 CA 09, for July 19, 2006, at 9. 00. a. m., without any service of process to Mr. Nicolas S. Laurent., which petitioner discovered in the docket on July 15, 2006.

C. The Eleventh Circuit Decision:

On July 18, 2006, Petitioner Laurent filed in the state court, Eleventh Judicial Circuit Motion to Dismiss Notice of Hearing and objection to Motions for foreclosure, and Dade Co. Petition for award of Surplus proceed, and affidavit of indebtness, etc, for Lack of Jurisdiction over the subject matter, and Lack of Jurisdiction over the person, indicated petitioner paid his mortgage inside the chapter 13 Bankruptcy Court payment plan, and don't owed the chapter 13 payment plan. The Eleventh Judicial Circuit Court erred failed to

requested Select Portfolio Servicing Inc., formerly known as Fairbanks Capital Corporation motion for relief from Automatic Stay, before initiate the foreclosure action.

Respondent, Select Portfolio Servicing Inc. formerly known as Fairbanks Capital Corporation failed to requested payment from Petitioner, before initiated the foreclosure action, as it required by the ten days Notice written in the mortgage Promissory note.

The Bankruptcy Court abused its discretionary discharged the chapter 13 case premature, when Petitioner had ten days of automatic Stay, in effect.

D. Respondent violation in the automatic Stay:

Act undertaken in willful violation of the automatic Stay are void, and may expose the violators of monetary sanction & punitive damage pursuant to 11 U.S.C. 362 (h). Petitioner, Nicolas S. Laurent never request discharge of the Bankruptcy Chapter 13 case.

Judge Raymond B. Ray erred failed to refrain creditor Select Portfolio Servicing Inc., formerly known as

Fairbanks Capital Corporation, from committed violation in the Chapter 13, Bankruptcy Automatic Stay.

On May 2, 2005, Order Reopening Chapter 13 case, Judge Raymond B. Ray acknowledge that the clerk of Court made clerical mistake, on April 19, 2005, ,by discharge the trustee, case closed premature, in the ten days of Automatic Stay, for Laurent to filed objection, and notice of appeal pursuant to Rules 8002(a). Upon an entry of judgment dismissal or discharge, in the Bankruptcy Court, automatically, the Stay is an effect for ten days. App. 15c.

The foreclosure on April 21, 2005, should be vacated, and reverse, since it took place in the Automatic Stay.

District Court erred failing to investigate Respondent, Select Portfolio Servicing Inc., formerly known as

Fairbanks Capital Corporation, abusive history in committing deception foreclosures.

Remark Industries v. La. 973 F. 2d 1124 (3 d Cir. 1992), Supremacy Clause of the U. S. which provide that the law of the United States Constitution are Supreme law of the land no withstand any state law.

Respondent, Select Portfolio Servicing Inc., formerly known as Fairbanks Capital Corporation routinely fabricate wrong foreclosure action, without proper notice, and when Petitioner, Laurent's mortgage loan is not in default. and Respondent, violated the Federal Rules **18 U. S.C. & 1692f (1).**

Rules 11 U. S. C. Section 323:

Respondent, Nancy N. Herkert is a private individual or corporation appointed by the United States trustee to administered consumer bankruptcy cases, in Chapter 13, for Southern District of Florida. They collect all assets, collect your monthly payment, make payment to your creditor, and finally these private can be litigate. Trustee officers have a contract with the Federal government, they are not component of Justice Department.

18 U.S.C.§ 153, the trustee has the duty not to appropriate his or her own use embezzle, spend or transfer any property of the estate, the trustee further has the duty not to secrete or destroy any document belonging to the estate, which came to his or her charge. April 21, 2005, foreclosure should be vacated; since it took place in the Automatic Stay.

Fairbanks Capital Corporation has a tendency to assess late fees and other fees, even though borrower's monthly payment were not late, charge fees that were not authorized, obtained property insurance at the borrower's expense. In Fellheimer, Eichen, Braverman vs. Charter technologies 57 F. 321215 Bankr. L. Rep (CCH) 76544, 32 FED. R. SEV. 3d (LCP) 1263 (3 Cir. Pa. 1995.

Respondent, Select Portfolio Servicing Inc., formerly known as Fairbanks Capital Corporation refused to accept pay-off, made delay of time, by increasing, and charge excess amount of fees, and other fees, in so many occasions, which violates FTC and RESPA law.

Constitution Bank vs. Stubbs, 68 F. 3d 685 (3d Cir. 1995, violation of the automatic Stay is void, and could not invoke the subject matter jurisdiction of the Circuit Court, because the state Court lacked the necessary jurisdiction to rule upon.

Elgin, Joliet, Eastern Ry Co v. Industrial Community 911 2 D 505, 507, 138 N. E 3d 553 (1956).

Melrose Park National v. Capitol Bank Trust 18011 App. 3d 662 N. E. 2d 104 (1989). The majority of the Federal Circuit has determined that the automatic stay imposed by the federal bankruptcy Code divest a State Court against the debtor assets, after filing of the Petition. River Park Inc., city of Hyland Park, 184 111 2d 290, 306, 703 N. E. 2d 883 (1998).

Sunshine Development Inc. vs. Federal Deposit Insurance Corp. 33 F. 3d 106 (1 St Cir. 1994).

Steel Co, v. Citizen for Better Environment 523 U. S. 83 118 S. Ct 1003, 1406.

Petitioner Laurent paid sufficient money to Respondent, Nancy N. Herkert, chapter 13 trustee, to paid all the creditors inside the chapter 13 payment plan.

REASONS FOR GRANTING THE WRIT

Petitioner, Nicolas S. Laurent is entitle to the homestead residential property, since petitioner is not in default in his mortgage payment to creditor Fairbanks Capital Corporation, now change its name to Select Portfolio Servicing Inc.

The Eleventh Circuit Decision Does Conflict with

this Court Precedents or the Law, in any other Circuit. Court of Appeals is contradictory to its own ruling made in Petitioner Laurent case. Borg Warner Acceptance Corp. v. Hall 685 F. 2d 1306 (11th Cir. 1982), Action taken an violation of the Automatic Stay are void, and without effect. A creditor may be subject of court, and a fine, and the debtor may be entitle to attorney fees. Federal Rule 15 (a) authorize a court to grant leave freely, when justice so require, unless the is bias and prejudice toward Petitioner, Nicolas S. Laurent.

Petitioner Laurent's motion for leave accompany Notice of Appeal filed timely on July 5, 2005, in the bankrup tcy Court to the U. S. District Court., within 10 days of the bankruptcy court's order, which states that a Notice of Appeal, pursuant to Rules 8002(a), must be filed within 10 days of the date of the entry of the order appealed from, which petitioner Laurent comply, with the bankruptcy rules of appellate procedure. The timely filing of a Notice of appeal is mandatory and jurisdictional. If the notice is not timely filed, the appellate court is without jurisdictional to hear the appeal. In this case, the United States District Court has full jurisdiction to hear Mr. Laurent appeal filed timely. On August 2, 2005, the U. S. bankruptcy court granted Petitioner Transmittal Motion for Leave to Appeal to the District Court in Florida. App. 23c-24c.

This case has great merit for greater public impor tance for the proper administration of justice, since it involved abuse discretionary, clerical mistakes, misrepresentation deception foreclosure, violation in the Automatic Stay. Courts have held that, if an act is void, because it because it violated the automatic stay, a subsequent court order terminating the stay will not revive the void action.

Select Portfolio Servicing Inc., formerly known as Fairbanks Capital Corporation violated the chapter 13 payment plan, Automatic Stay, with malicious intent, bad faith, and has tendency to committed deception foreclosure when the consumer doesn't owed.
Petitioner Laurent doesn't owed mortgage payment, and comply with the term and condition of thebankruptcy court payment plan, to made the payment, to Ms. Nancy N. Herkert, chapter 13 trustee, to paid creditor Fairbanks Capital Corporation, now change its name to Select Portfolio Servicing Inc.

The power to retroactively annul the automatic stay must be exercised sparingly. The principle of Bankruptcy law, the policies underlying the Automatic Stay, would be undermined by granting Select Portfolio Servicing Inc., retroactive stay. First creditor, Fairbanks Capital Corporation now change its name to Select Portfolio Servicing Inc., failed to demonstrated that it justifiably believed its action did not violate the Automatic stay.

"IMC Mortgage Co., Inc., v. Brown (In re Brown), 251 B.R. 916 (Bankr. M. D Ga 2000) (Walker, J). In other words, the violation must not have been willful. Second, the creditor must prove that it did not violate the policies underlying the automatic stay" by shown that its action did not interfere with the 'breathing spell," created by the stay and that its foreclosure had no negative impact on other creditors, with respected to the first requirement, Creditor knowing fully that it violated the automatic Stay., since Fairbanks Capital Corporation is a creditor receiving payment inside Petitioner chapter 13 bankruptcy payment plan, from

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[3]. There is no time limit for attacking a void Judgment under N. D. R.. Civ.P. P 60 (b) (iv). Eggv. Fleet Guard, Inc., 1998 N D 166, 583 N.W. 2d 812. the bankruptcy not only has the power to impose sanction an attorney for Bad conduct in litigation.

Respondent, Nancy N. Herkert, Chapter 13 trustee.

Court have held that if an act is void because it violated the automatic Stay, a subsequent court order terminate the stay will have to initiate a new suit. On March 17, 2004, Jurisdictional Defect exist at the time Fairbanks Capital Corporation commence the deception false representation foreclosure action without service of process to Petitioner and his wife in the State Court, Eleventh Judicial Circuit Court West Flagler Miami, Florida, case # 00-18954 - CA-01, by conspire with another company name U. S. Bank National Association etc who is not the valid mortgage, to fabricated a deception, foreclosure action, on petitioner residential homestead property, without relief from Automatic Stay, in the Chapter 13 payment plan.

The Bankruptcy Court erred in the order on June 15, 2005, granting Select Portfolio Servicing Inc., Retroactive stay, since Select Portfolio Servicing Inc., is not a party in the lawsuit U.S. Bank National Association etc vs. Nicolas S. Laurent, and wife, initiate by attorney Denise Rosenthal.

As of today, U. S. Bank National Association, etc, attorney Denise Rosenthal, still has not filed any motion for relief from automatic Stay, in Petitioner Bankruptcy Court Chapter 13 payment plan.

Fairbanks Capital Corporation, now change its name to Select Portfolio Servicing Inc., failed to sent Petitioner any Notice of Intent to indicated it plan to foreclose on Petitioner's residential homestead property protected under the bankruptcy code.

Fairbanks Capital Corporation, now known its name to Select Portfolio Servicing Inc., a creditor inside petitioner Chapter 13 payment plan was fully aware of the Automatic Stay, and have actual knowledge of

petitioner Bankruptcy court filing.

Proceeding that violate the Automatic stay are void and of no effect. Kalb v. Feuerstein, 308 U. S. 433, 438, 60 S. Ct, 343, 346, 84 L ED 370 (1940) (the action of the court was not merely erroneous, but were beyond its power, void, and subject to collateral attack. Ellis v. Consol Diesel Elec. 894 F, 2d 371 (10th Cir. 1990) any action taken in violation of stay is void and without effect; In re marriage of Berkland, 762 P. 2d 779 (Colo App. 1988 of attorney's lien filed in violation of automatic Stay was void.

C.R.C.P. 60(b) (3) provides for relief from a Final judgment, when the judgment is void.

Thus since Select Portfolio Servicing Inc., and U. S. Bank National etc., had not sought relief, from the automatic Stay, in the State Court, Eleventh Judicial Circuit Court Dade County, Miami, Florida, therefore judge Marc Schumacher should never proceed, with foreclosure on petitioner's property on April 21, 2005.

A Judgment obtained without jurisdiction over the defendant is void. Overby v. Overby, 457 S. W 2d 756, 758 (1987).

A Judgment is void if the court acted in a manner inconsistent with due process. A void Judgment is a

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4. The distinction between actions of the court that is void ab initio rather than merely avoidable is that the former involves the underlying authority of a court to act on a matter whereas the latter involves action taken by a court which is in error. An order is void able initio if entered by a court in the absences of jurisdiction of the subject matter, or over the parties, if the character of the order is such that the court had no power to render it, or if the mode of procedure used by the court was one that that the court could not lawfully adopt." the lack of jurisdiction to enter an order under any of these circumstances renders the order a completely nullity and it may be impeached directly or collaterally by all person, anywhere, at any time or any manner.

nullity and can be vacated at any time."261 Kan, at 862. The state Court, Eleventh Judicial Circuit, Lack of jurisdiction over the subject matter and Lack of Jurisdiction over the person to made the foreclosure action on Petitioner's residential property, on April 21, 2005, because the property is protected under the bankruptcy Code.

Respondent, Select Portfolio Servicing Inc., and U.S. Bank National Association attorney Denise Rosenthal knowing fully of petitioner bankruptcy filing, and nevertheless proceeded with the foreclosure supports a finding of willfulness.

Those actions were taken knowing of the existence of the Automatic stay, once jurisdiction is challenge, the court cannot proceed, when it clearly appears, that the court lacks jurisdiction.

The court has no authority to reach merits, but rather should dismiss the action." Melo v. U. S. 505 F. 2d 1026. Court of Appeals Ruling is entirely inconsistent with Prior decision of this court, and other court.

The automatic Stay §362 (a) prohibits" any act to obtain possession of property of the estates or of property from the estates or to exercise control over property of the estates.

Court of Appeals for Eleventh Circuit is in conflict with the Court of Appeals Second Circuit. Court of Appeals for the Second Circuit in Crysen / Montenay Energy Co. v. Esselen Assoc., Inc., (In re Crysen / Montenay Energy Co.), 902 f.2d 1098 (2d Cir 1990) set forth the standard for awarding damages pursuant to code

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5. 11 U.S.C. § 362 (a) (1)(1994), it was created to prevent different creditors from filing an action in different court in various attempted, to capture the bulk of the debtor assets.
Norris vs. Estates of Norris 143 11 app. 3d 741. 748. 493. N. E. (121) (1986).

§ 362 (h) According to the Second Circuit, "{a)ny deliberate act taken in violation of a stay, which the violator knows to be in existence, justifies an award of actual damages.

Furthermore," (a}n additional finding of maliciousness or bad faith on the part of the offending creditor Select Portfolio Servicing Inc. warrants the further imposition of punitive damage pursuant to 11 U. S.C. § 362 (h).

Section 362 (h) provides that "[a]n individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages."

Fairbanks Capital Corporation violated the automatic stay willfully, in bad faith, and injured petitioner, Nicolas S. Laurent, and wife, and family.

As a general proposition upon a finding that a willful violation of the stay has occurred, and that damages resulted an award of damages is mandatory. In re Taylor, 854 F. 2d 478, 483 (9th Cir. 1989).

In re Soares v. Brockton Credit Union (In re Soares), 107 F. 3d 969 (1st Cir. 1997), the court said that " Selection 362 (a) (1) of the bankruptcy codes provides that the filing of bankruptcy petition stays the commencement or continuation of all no bankruptcy judicial proceeding against the debtor, " id. at 973, and that acts committed in violation of the stay are void-not avoidable.

Petitioner Laurent have ample interest and equity in the residential homestead exemption property.

On March 17, 2004, Petitioner had Automatic Stay in the bankruptcy court, at the time the state court, Eleventh Judicial Circuit, Judge Marc Schumacher made quiet orders for U.S. Bank National etc., against

Petitioner's residential homestead property, without relief from automatic Stay, and without service of process.

A willful violation of the stay occur when a creditor, with knowledge of the stay, seizes the debtor's property without first obtaining relief from stay from the bankruptcy Court. Bankruptcy Rule 8002 (a), when an order enter in the bankruptcy Court docket, automatically the debtor have ten days of Automatic Stay. On April 21, 2005, at the time of the foreclosure, in the Eleventh Judicial Circuit Court, Petitioner made oral Objection, to halted the foreclosure, in his residential property, "indicated to the Court and to the bidder named Ike Fernandez, etc., that Petitioner's property is protected under the bankruptcy Code Chapter 13; and Petitioner have 10 days of Automatic Stay in effect as of today, from the Bankruptcy Court order entry on April 14, 2005, pursuant to Bankruptcy **Rules 8002 (a).**

Rules 62(a), no execution shall issue upon a Judgment nor shall proceeding be taken for its enforcement until the expiration of 10 days after its entry.

U.S. Bank National Association etc doesn't have relief from the automatic Stay, to bring this action in the State Court, Miami, Florida.

On April 21, 2005, Petitioner Laurent also filed writing Objection to the foreclosure, in the State Court, Eleventh Judicial Circuit Court, West Flagler, Miami-Florida, indicated this property is protected under the bankruptcy code, and attorney Denise Rosenthal doesn't have relief from the automatic Stay, to proceed with the Foreclosure on April 21, 2005. The foreclosure department, in Miami-Florida, disregard the Bankruptcy Rules of Automatic Stay; proceed with the foreclosure, action on petitioner's property, on April 21, 2005.

The Supreme Court held that without proper jurisdiction a court cannot proceed at all, but can only

note the jurisdiction defect and dismiss the lawsuit. Capron van Noorden, 2 Cranch 126; Arizonans for official English v. Arizona, 520 U.S. 43.

Courts are constituted by authority and they cannot go beyond that power delegated to them, If they act beyond that authority, and certainly in contravention of their Judgment and orders are regarded as nullities; they are not avoidable, But simply void, and this even prior to reversal' Williamson v. Berry, 8 How. 945, 540 12 L. Ed. 1170, 1189 (1850).

Select Portfolio Servicing Inc., is not entitle to retroactive stay; since Petitioner Laurent have enough sufficient of interest and equity in his residential homestead exemption property **for** effective Chapter 13 reorganization payment plan.

Petitioner, Nicolas S. Laurent interest and equity in the residential property is superior to any other party, and to any other claim, when petitioner brought the residential homestead exemption property, it was about 1200 (twelve hundred square feet).

Petitioner spent thousands of dollars to expand and enlarge the residential homestead property.
On or about 1986-1987, Petitioner made major entire renovation, in his residential property. add three new bathroom, living room, dining room, front porch, back porch , concrete sidewalk and five bedroom, total seven bedroom.

On April 21, 2005, Petitioner's interest, equity, and value in his homestead residential property exceed more than $ 350, 000. 00, (Three hundred fifty, thousand dollars). that is one of the reason why Fairbanks Capital Corporation is after Petitioner Laurent equity in the property, and refuses to obtain payment and pay - off, in so many occasions, from Mr. Laurent.

On April 21, 2005, Petitioner's Laurent property located on 1915 N.W. 134 Street Miami, Florida 33167,

is in good condition, new paint, new carpet, house size measures 3, 500 square feet, locate in nice residential area, lot measure on or about 75 by 137 feet.

The bidder bid $ 165, 000. 00. less than value of the property, worth more than, $ 350, 000. 00, dollars, (Three hundreds fifty thousand dollars. Petitioner, Nicolas S. Laurent, and family is the injure party, evict from his property, without due process, cause Mr. Laurent economic damages, stress, and embarrassment, and cause his children to suffer nightmare for bias and prejudice, against Mr. Laurent, and family.

Petitioner interest, equity, and value, in the property is superior to any other claims, and to any other parties.

Select Portfolio Servicing Inc., formerly known as Fairbanks Capital Corporation, U.S. Bank National Etc, and the bidder are not injured party, since they violate the automatic stay in bad faith, with malicious intent.

Respondent, Select Portfolio Servicing Inc., formerly known as Fairbanks Capital Corporation has a tendency to charge unwarranted fees, commit deception foreclosure, received 5 years permanent Court **injunction,** in U.S. District Court of Massachusetts, signed by Honorable judge Douglas P. Woodlock, on November 21, 2003, case # 03-12219- DPW, which prohibit and restrained, from committing misleading foreclosure.

Petitioner Laurent paid Respondent, Nancy N. Herkert, chapter 13 trustees, more than $ 78, 127. 10, dollars, inside the Chapter 13 payment plan, to paid all the creditors inside the payment plan.

Court of Appeals erred failed to investigate Fairbanks Capital Corporation, now known as Select Portfolio Servicing Inc., permanent Court order injunction for five years, for deception, and corruption in mortgage foreclosure., which is fully in active, and effect as of today. Therefore any post petition action such as the

initiation of a lawsuit, it generally considered to be void, because it violates, the Bankruptcy Code's of Automatic Stay. The bankruptcy court failed to made ruling in Petitioner's Motion Automatic Stay, filed on May 5, 2005, in the bankruptcy, before granting Select Portfolio Servicing Inc., retroactive Stay, on June 15, 2005.

Fairbanks has a tendency to put consumer payment in a suspense account. The remaining mortgage balance for Fairbanks Capital Corporation, now change its name to Select Portfolio Servicing Inc., is less than $ 66, 000. 00, dollars.

Fairbanks Capital Corporation now change its name to Select Portfolio Servicing Inc. has a tendency to violated state and Federal law, or regulation governing services that breaches the term of the Note, and the deed of trust that governs the loan, and also has a tendency of abusive Service practice; include improper foreclosure action, attempted foreclosure, improper fees, improper forced placed insurance, or improper use or oversight of escrow funds.

Select Portfolio Servicing Inc., is doing the same deception foreclosure action that Fairbanks Capital Corporation **received a Court order injunction prohibit from committing).** A Judgment is void, if the court acted in a manner inconsistent with due process. A void Judgment is a nullity and may be vacated at any time."261 Kan, at 862.

Petitioner comply with the term, and the condition of the payment plan, fulfilled and perform all his obligation to made his payment to Respondent, Nancy N. Herkert, every month to paid the creditors inside the Chapter 13 payment plan.

Petitioner doesn't owed Fairbanks Capital Corporation, who have history of committing deception foreclosures A. judgment rendered during the pending of an automatic Stay is void, and Annul, because it constitutes the

exercise of judicial discretion in violation of the automatic Stay, Jennings vs. Enterprise vs. Carte 224 GA App. 538, 540 (1), 481 SE 2d (541) (197), See Colden vs. States of GA 244 App. 793, 794, (536 SE 2d 820.

Even a State Court of General Jurisdiction lacks subject matter Jurisdiction, when it empower to act has been divested, by a Federal Statute.

Void is defined as annul, nugatory, having no legal effect, unable in law to support the purpose, for it was intended. Act undertaken of "willful violation of the automatic Stay is void and may expose the violators of monetary sanction, punitive damage pursuant to 11 U. S. C. § 362 (h).

Petitioner, Nicolas S. Laurent pray the Honorable Supreme Court of the United States to grant Petition for Writ of Certiorari for the reasons discussed above as well as those set forth in the Petition.

I, Nicolas S. Laurent do solemnly swear that the above statement is true and complete to the best of my knowledge.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

Nicolas S. Laurent
P. O. Box 260189
Boston, Massachusetts 02126
Tel: (617) 894-9774
Pro Se / attorney

Dated May 10th, 2007

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IN THE UNITED STATES COURT OF APPEALS
FOR THE ELVENTH CIRCUIT

{ Entered July 18, 2006 }

N0: 06 – 10802
Non-Argument Calendar

D. C. Docket Nos.
05- 22101- CV – CMA
00- 50881 – BKC – RB

In Re: NICOLAS LAURENT,
Debtor

NICOLAS LAURENT,
Debtor,

plaintiff- Appellant,

versus

SELECT PORTFOLIO SERVICING, INC.,
NANCY N. HERKERT, CHAPTER 13 TRUSTEE,
Defendants – Appellee.

Appeal from the United States District Court
For the Southern District of Florida

(JULY 18, 2006)

Before DUBINA HULL and MARCUS, Circuit Judges

PER CURIAM

Nicolas Laurent, a Chapter 13 debtor proceeding pro se, appeals the district court's dismissal of his appeal from the bankruptcy court's order concluding that at the time of the foreclosure proceedings on Laurent argues that the district court erred by dismissing his appeal without providing him with Notice and an opportunity to appear, in violation of due process. He also asserts that Select Portfolio Servicing, Inc., (''Select "), He also asserts that Select Portfolio Servicing, Inc., (Select), the mortgagor's servicing agent, engaged in fraud when it (1) breached the term of a promissory note that it signed with a third party, (2) executed the foreclosure action, and (3 charged excessive and illegal fees.1 We affirm.

The relevant facts are these. In 2000, Laurent filed a Chapter 13 Bankruptcy case, thereby temporarily staying a foreclosure on his home. After a series of dismissals and reinstatement, the case was dismissed for the Final time on January 7, 2004.

On February 2, 2004, Laurent filed a motion for automatic Stay through April 7, 2004, and a

1. Laurent's additional argument, that the district Court could not deny his appeal, because he had timely filed document filed documents and paid the proper fees, is without merit since it is clear that the district court ruled on the merits of his appeal, and district court ruled on the merit of his appeal and did not deny it based upon procedural deficiency.

Motion to Reinstate.

The bankruptcy could not denied the motion to reinstate, but did not explicitly rule on the motion for an automatic stay.

Over one year later on April 21, 2005, the mortgagor for which Select Portfolio Inc. (Select") was the servicing agent, executed a foreclosure action on Laurent's home in state court, and Laurent's home was sold. The state court, however, declined Select's request to transfer the title, noting that on the bankruptcy court had not yet resolved Laurent's February 2, 2004, motion for an extension of the automatic stay.

Thereafter, on May 13, 2005, Select filed a "Motion for Declaration that the automatic Stay is not in Effect." in the bankruptcy court. On June 15, 2005, The bankruptcy Court granted Select's motion, finding that the automatic Stay had not been in effect since it had dismissed the case on January 7, 2004. Laurent appealed from that decision to the district court, which affirmed the bankruptcy court. this appeal followed.

When reviewing an appeal from a bankruptcy proceeding we review legal determination de novo, whether from the bankruptcy court's factual findings for clear error.

In re Simmons, 200 F. 3d 738, 741 (11 th Cir. 2000, the denial of a motion to alter or amend Judgment review for an abuse of discretion. See Mays v. United States Postal Serv, 122

F 3d 43 46, (11th Cir. 1997) (reviewing a district Court ruling on a Fed. R. Civ.P. 59 (e) motion to alter or amend judgment).

Upon filing a petition for bankruptcy, the automatic Stay is imposed and continues until the earliest of the following: the case is closed ; (2) dismissed, or (3) discharged. 11 U. S.C. § 362 (c) (2). Parties have ten days in which to appeal a Judgment or order of the bankruptcy court. Fed. R. Bank.P. 8002(a).

On Appeal, Laurent does not address the substance of either the district court's or the bankruptcy court's decision instead, he summarily asserts that the stay was in effect at the time when his house was foreclosed. Other than a condition of the fact and unsupported allegation of fraud, and conspiracy Laurent's brief revealed no discernable issue for our review, despite that we have construed the brief liberally, as is our custom with pro se briefs. See Powell v. Lennon 914 F.2d 1459, 1463 (11th Circuit 1990). When a party " elaborate no arguments on the merits as to (as to issue in the its initial or reply brief the issue is deemed waived., Greenbrier, Ltd v. City of Alabama 831 F. 2d 1570, 1573 n.6 (11th Cir. 1989) (emphasized added). On this record, we concluded that Laurent has waived his arguments on the merit as to the underlying decisions.

Moreover, we observe that the thrust of Laurent's argument in the district court was that the bankruptcy court had, in fact, granted an extension of the automatic stay.

through April 7, 2004, However, whether or not an extension was granted as to that date is inapposite since the foreclosure on Laurent's house did not occur until April 2005, Moreover, to the extent Laurent implies that the automatic was in effect sometimes after January 2004. he does not point to any order reinstating the stay and our review of the record has not revealed such an order.

In Sum, by not raising them in his brief, Laurent has waived his claims on the merits concerning the underlying proceeding. Consistent with our policy if construing pro se briefs liberally, we have reviewed the arguments he raised on Appeal in the district court and have found no basis for reversal.

AFFIRMED

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
{Entered September 18, 2006

N0 06 –10802-CC

In Re: NICOLAS LAURANT,
Debtor.

NICOLAS LAURANT,

Plaintiff- Appellant,

versus

SELECT PORFOLIO SERVICING, INC.,
NANCY N. HERKERT, CHAPTER 13 TRUSTEE,

Defendants – -Appellee.

Appeal from the United States District Court for the

Southern District of Florida

ON Petition (s) For Rehearing And Petitions(s) For
REHEARING EN BANC
(JULY 18, 2006

Before: DUBINA, HULL, AND MARCUS, Circuit Judges.

PER CURIAM

The Petition(s) for Rehearing are Denied and no Judge in regular active service on the court having requested that the court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure, the Petition(s) For Rehearing En banc, the Petition(s) for Rehearing En Banc are Denied.

ENTERED FOR THE COURT:

/s/

UNITED STATES CIRCUIT JUDGES

CLOSED CIVIL CASE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
{Entered November 18, 2005}

CASE NO. 05-22101-CIV-ALTONAGA/ Turnoff

IN RE:
NICOLAS S. LAURENT, et, al.,
Appellants

vs.

NANCY N. HERKERT
CHAPTE 13 TRUSTEE
et, al.,
Appellees

_____/

ORDER ON BANKRUPTCY APPEAL

THIS CAUSE came before on Appellants' appeal from a June 23, 2005, order of the bankruptcy court. The Court has carefully considered the written submission of the parties, the record on appeal, and the parties arguments.

I.BACKGROUND

On October 10, 2000, Appellant, Nicolas S. Laurent filed A prose Chapter 13 Bankruptcy case in the United States Bankruptcy Court for the Southern District of Florida (Bankruptcy Court'}, thereby staying a foreclosure action that had been filed against Laurent's property. Appellee, Nancy N. Herkert was the Chapter 13 trustee assigned to this matter, and Appellee, Select Portfolio Servicing, Inc. ("Select } was the servicing agent for the creditor and mortgagor, U. S. Bank National Association(mortgagor").

Despite several attempt to funds a Chapter 13 plan, and after several dismissal

for failure to do so the Bankruptcy case was finally dismissed on January 7, 2004. On February 2, 2004, Laurent filed a Motion for Automatic Stay of Execution, and Suspend {sic) Proceedings, which motion, along with a Motion to Reinstate the Case, was heard by the bankruptcy judge on March 1, 2005, The Bankruptcy Court's written, but order denied the Motion to Reinstate, but did not explicitly address this motion for automatic Stay of Execution and Suspend (sic). Proceeding. While the Trustee Argues that this motion was orally denied by the bankruptcy Judge (- Appellee's Reply Brief. p. 4) Appellant claims that the Judge granted the motion, Extending the automatic Sty until April 7, 2004. (Appellant's Initial Brief, P. 3).

On April 21, 2005, Mortgagor executed a foreclosure action against the Homestead property. the State Court judge, However was hesitant to enter an order directing the clerk to issue a certificate of title until resolution of the uncertainty surrounding the status of the motion for Automatic Stay. The unsolved questions related to this Motion included the Following: (1) whether the motion for the automatic Stay had in fact been denied;, and (2) assuring that the motion had been denied, whether the Automatic had terminated Upon the January 7, 2004, dismissal of the bankruptcy case, upon the March 1, 2005 hearing, or upon some other date.

In response to the foreclosure action, on May 5, 005, Appellant filed a Motion for Stay pending Appeal and Thereafter, on May 13, 2005, Appellee, Select file A Motion for Declaration and the automatic Stay is not in effect.

On June 15, 2005, the bankruptcy Court granted Select's Motion, ruling that the automatic Stay had not in effect since th dismissal of the case on January -

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The case went underwent a series of dismissal and subsequent reinstatement. the First such dismissal and reinstatement occurred on February 22, 2001. and April 19, 2001, for failure to fund and for subsequent funding. Respectively the next dismissed and reinstatement , also for failure to fund and for subsequent funding, occurred on ajulel, and July 2001, respectively. on F4, 2003, February 4, 2003, the case again dismissed, this time for failure to filed a modified plan, and then reinstated on March 6, 2003, upon the filing of a modified plan.
the case was Finally dismissed on January 7, 2004. for failure to modified Chapter 13 plan.

7, 2004, In Response, on June 20, 2005, Laurent filed an objection to the Hearing and on June 22, 2005, A Motion for the Court to Alter or Amend the June 15, order. On June 23, 2005, the bankruptcy court denied these two Motions along with Laurent's May 5, 2005, Motion for Stay Pending Appeal.

On July 5, 2005, Laurent filed a Notice of Appeal and Motion of Appeal of the June 23, 2005, order Denying Motion to Alter or Amend. At issue in the present appeal is whether the bankruptcy erred as a matter of law in its June 15, 2005, order declaring that the automatic Stay had terminated on January 7, 2004, and therefore that the action taken by Select, the state court, or the Bankruptcy Court, since January 7, 2004, relative to the foreclosure proceeding have not in been in violation of the Stay.

II Standard of Review

District courts have appellate jurisdiction over the judgments, orders. and decrees of bankruptcy courts, 28 U. S. C. § 158 (a), on appeal s district court reviews a bankruptcy courts conclusion of de novo. In calverts, 907 F. 2d 1069, 1071 (11th Cir. 1990), A bankruptcy Court factual finding, however that, may not be sat aside unless they are clear erroneous Id. A finding is clearly erroneous when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite term and Firm conviction that a mistake has been committed. United States v. Gypsum Co., 333 U. S. 364, 395, (1948). Where there are two permissible views of the evidence, the fact finder's choice between them cannot be clearly erroneous." Anderson City v. Bessemer City, 470 U.S. 564, 574 (1985).

Close action would include moist pointedly, the bankruptcy order, on July 22, 2005, that the Metro Dade County sheriff Department remove Appellant from the homestead property.

III Discussions

An automatic stay, once imposed continues unless otherwise ordered otherwise ordered or until the occurrence of the following: the case is closed, dismissed or discharged. 11 U.S.C. § 362 (c) (2) judgments to dismiss, close or discharge become finalized ten days after their issuance. F. R. B. P. 8017(a) In disgusting between the closing and dismissal of a Chapter 13 case, it has been noted that.

In practically every chapter 13 case that is dismissed administrative matter remain that the Chapter Trustee must complete before the case is closed. Although the case may remain open after dismissal the automatic stay of § 362 of the bankruptcy codes terminates when the case is dismissed. Section 362 (c) provides that the automatic Stay terminates upon the earlier of the time the case is closed, the time the case is dismissed, or the times a discharged is granted or denied. In Re Hill, 305 B.R. 100, 104 (Bk rtc, MD , Fla 2003).

Further, the automatic Stay under 11 U. S. C. § 362 is by act of congress and even though the Bankruptcy is given the right to continue the stay by denying a grant of relief from stay under carefully controlled circumstances, there is no specific grant of authority to impose the stay once it has been lifted. " In Re Stuart Motel, Inc., 15 B. R. 28, 30 (Bk Rtc. S.D. Fla. (1981). Rather once an automatic Stay has been lifted, a debtor must filed an adversary action in order to obtain a new stay, which action should meet the standards set by the bankruptcy Rules 7065.

From a plain reading of the law, it is clear that the automatic Stay in the present case was lifted upon on January 7, 2004, dismissal of Laurent's bankruptcy case.

Despite the numerous papers and motions. that Laurent filed subsequent to the dismissal, he did not files any motions, adversary complaints or notices of Appeals within the ten day period the dismissal order, and the dismissal became final on January 17, 2004, ten days after it issuance. 3 Even if it were presumed,

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Although Laurent did file an adversary action on August 18, 2004, Subsequently , on August 25, 2004, he filed a motion to dismissed the adversary , which the motion was granted.

As Appellant argues (Appellant 's Initial Brief P 3) that the Bankruptcy Court had granted his February 2, 2004, Motion for Automatic Stay, extending the Stay, until April 7, 2004, Appellant did not properly move to reinstate the stay after April 7, 2004, and the foreclosure proceeding, having been executed on April 21, 2005, would therefore have been permitted.
Similarly though Appellant alternatively argues that the April 21, 2005, foreclosure is currently stayed as a result of his separately filed May 27, 2005, case
(Appellant's Initial Brief, pp 6, 7, 29,), This separate case does not pertain to the issue of foreclosure per se , but rather to the narrower issue of the discharge of the trustee, resolution of which does not directly bear upon the present questions of the automatic Stay. Therefore, when the dismissal became Final on January 17, 2004, the automatic Stray was lifted and mortgagor was justified in relying upon the dismissal became Final on January 17, 2004, the Automatic Stay was lifted , and mortgagor was justified in relying upon the dismissal pursue foreclosure action.

IV. CONCLUSION

For the going reason **it is ORDERED and ADJUDGED that the June 23, 2005, Order** denying Motion to Alter or Amend is **AFFIRMED** and the Motion for Appeals is DENIED. The clerk of the court is instructed to close the case.

DONE AND ORDERED in chamber at Miami, Florida, this 18 day of November, 2005.

/s/

CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: judge Raymond B. Ray
Counsel of records
Nicolas S. Laurent, pro se

It s case 05 - 21438 - Martinez is currently pending in the Southern District of Florida.

U.S. BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
Entered on May 2, 2005

In re: Case No. 00-50881-BKC-RBR
Nicholas Laurent Chapter 13

ORDER RE-OPENING BANKRUTPCY CASE

THIS MATTER has been brought to the court's attention sua sponte. The court entered an Order closing chapter 13 case dated April 14, 2005. The clerk erred in administratively closing this case without regard to the ten day period for file a Notice of Appeal pursuant to bankruptcy rule 8002. On April 28, 2005, the debtor filed his Notice of Appeal and Motion for Leave timely, it is therefore ORDERED That the Chapter 13 Bankruptcy case is reopened **on May 2, 2005.**

/s/
Raymond B. Ray
United States Bankruptcy Judge

Copy furnished to:

Nicholas Laurent
P.O. Box 693631
Miami, Fl 33269

Nancy N. Herkert
P.O. Box 279806
Miramar, Fl 33027

UNITED STATES BANKRUPTCY
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
(Entered June 15, 2005)
CASE NO.: 00-50881-BKC-RBR

In re:

NICOLAS LAURENT

Debtor.
_____/

ORDER GRANTING SELECT PORTFOLIO'S MOTION FOR DECLARATION THE AUTOMATIC STAY IS NOT EFFECT

THIS CAUSE having come before the Court on June 15, 2005 to consider Select portfolio's Motion for Declaration the Automatic Stay is not in Effect and upon hearing argument of counsel for Select Portfolio Servicing Inc., as agent for U.S. Bank National Association (Select) , and the Chapter 13 trustee, it is hereby Ordered that:

Select's motion for Declaration the Automatic Stay is not in effect is Granted. The court finds and therefore declares that the automatic stay ha not been in effect since entry of this court's order of Dismissal on January 7, 2004. Accordingly, actions taken by SELECT or the state court relative to foreclosure proceeding under the Circuit Court Case # 00-18954_ CA-01 U.S. Bank (N. A. vs. Nicolas Laurent, since January 7, 2004, and

related appellate proceedings, have not been in violation of the automatic stay. the foreclosure is not stayed by this bankruptcy at this time.

DONE AND ORDERED, in Miami, Florida this 15th day of June 2005.

/s/_____
Raymond B. Ray
U.S. Bankruptcy Judge

cc Gregg S. Ahrens, Esq., 2525 Ponce de Leon Boulevard, Suite 400, Miami, FL 33134

Nicholas Laurent, P.O. Box 693631, Miami, Florida 33269

Nancy N. Herkert, Trustee, P.O. Box 279806, Miramar, Fl 33027

EquiCredit

Fairbanks Capital Corporation
Loan Servicing Center
10401 Deerwood Park
Jacksonville Fl 32256
March 8, 2002

Dear Valued Customer:

We are pleased to inform you that EquiCredit Corporation of America is transferring the servicing of your mortgage loan to Fairbanks Capital Corp. effective April 1, 2002.

The transfer of mortgage, servicing is a common practice in today's market and does not affect any term or condition of your mortgage, other than those provisions related to the servicing of your mortgage. Please refer to the Notice of Assignment included with this letter for the Real Estates Settlement Procedure Act (RESPA) information. Fairbanks Capital Corp. is committed to providing the quality services you are accustomed to and is looking forward to making this transfer as smooth and pleasant experience for you.

Beginning April 1, 2002, Fairbanks Capital Corp., will be responsible for processing your loan payments.

Payment will be applied to your loan by EquiCredit Corporation of America, if received prior to April 1, 2002, or forwarded to Fairbanks Capital corp., if received on or before that date.

All payment and correspondence regarding your loan should be addressed as indicated below:

Payments	**Correspondence**
On or after April 1 2002	on or after April 1 2002
Fairbanks Capital Corp.	Fairbanks Capital Corp.
Remittance Processing	Loan Service Center
P.O. box 79157	10401 Deerwood Park
phoenix AZ 85062-9517	Jacksonville Fl 32256

Fairbanks Capital Corp. also offers a variety of payment option including Check by phone automatic withdrawal and Western Union Products. Pleas Telephone Fairbanks Capital Corp. Customer services at (800)-944-1212, on or after April 1, 2002, for more information regarding these products.

Our goal is to continue to meet your expectation of great service. If you have any questions regarding this transfer prior to April 1, 2002. Please contact EquiCredit Corporation of America Customer Service at the Number attached documents.
Sincerely.

Fairbanks Capital Corp.
EquiCredit Corporation of America

UNITED STATES BANKRUPTCY COURT
SOUTHEN DISTRICT OF FLORIDA
FT. LAUDERDALE DIVISION
(Entered May 13, 2005)

CASE NO: 00-50881-BKC-RBR
CHAPTER 13

In re:
NICHOLAS LAURENT

Debtor
_____/

SELECT PORTFOLIO'S MOTION FOR DECLARATION THE AUTOMATIC STAY IS NOT IN EFFECT

SELECT PORTFOLIO SERVICING Inc., as servicing agent for U.S. Bank National Association F/ K /A / First Bank National Association TR U/A Dtd 03/01/97, Home Equity Loan Trust 1997-1) hereinafter "Select through counsel filed its motion for Declaration the Automatic Stay is not in effect and in support thereof states:

Background / Chronology Events

1. Movant has filed this motion for Declaration the automatic is not in effect for the purpose of obtaining a comfort order to allow completion of a foreclosure in the state court.

2. Select hold a Note and Mortgage encumbering the following collateral:

Lot 10 Block 1 **Lakeside Manor according to the plat thereof, as recorded in Plat Book 55,**

page 90 of the Public Records of Dade County, Florida.

3. The debtor's filed this Chapter 13 proceeding on October 10, 2000.

4. On January 7, 2004, this bankruptcy was dismissed with prejudice. B. According pursuant to 11 U.S.C. 362 (c) (2), the automatic Stay terminated upon dismissal of the case.

5. On March 18, 2004, a foreclosure judgment was entered under Circuit Court Case No. 00-18954 by the circuit court and for Miami Dade County Florida. A copy of said Summary Final Judgment is attached as Exhibit C.

6. Since the case was dismissed, the debtor acting pro se has filed Numerous motions and several appeals, most of which were without notice to a select and other interest parties. from reviews of the docket history for this bankruptcy proceeding, every motion filed by the debtor has been denied, however the matter remain open for administratively purpose only.

7. At a hearing before the state court, the debtor produced a copy of this court's order re-opening Case, entered May 5, 2005, and argued that the automatic stay was in effect. The state court requested an order from the bankruptcy court confirming that actions in the state were not stay by operation of the bankruptcy.

8. Movant hereby seeks its attorney's fees and cost incurred in filing this Emergency Motion for Relief from stay.

WHEREFORE, SELECT Respectfully request this Court enter an order declaring the automatic stay has not been in effect since the date of dismissal January 1, 2004.

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 13th day of May 2005, to: Nicholas Laurent, P.O. Box 693631, Miami, Florida 33269; and Nancy N. Herkert, trustee, P.O. Box 278806, Miramar, Florida 33027.

ADORNO & YOSS LLP
2525 Ponce De Leon Boulevard
Suite 400
Miami, Fl 33141
Telephone: (305) 460-1000
Fax : 460-1421
/s/_____
_Gregg S. **Ahrens**
Florida Bar No. 352837

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FT LAUDERDALE DIVISION
Entered August 2, 2005

CASE NO. 00-50881 BKC-RBR
CHAPTER 13

In re:
NICHOLAS S. LAURENT
Debtor
Plaintiff

Defendant /

AMENDED

TRANSMITTAL MOTION FOR LEAVE TO CLARRENCE MADDOX COURT ADMINISTRATOR / CLERK COURT
The parties or parties included in the Motion

MOVANTS
Appellants

Attorney: Nicolas S. Laurent
P.O. Box 693631
Miami, Fl. 33269

APPELLANT (S) Nicolas S. Laurent
RESPONDENT /
Appellee (S) Attorney Gregg S. Ahrens, Esq.
2525 Ponce De Leon Blvd # 400
Miami, Florida 33134
APPELLEE (S) Select Portfolio Servicing Inc.,
Title & Date of order to be Appeal Order Denying Motion to Alter or Amend

[√] Motion for Leave to appeal [√] respondent's answer

[√] Notice of Appeal [√] Movant's Reply
[√] Copy Docket
[√] Other _____

_____

KARREN EDDY CLERK OF COURT

Dated 8 / 2 / 05

By /s/ Susan P. Harper__
Deputy Clerk USBC
Telephone No. **954-769-5700**

Amended to Reflect Correct -Appellee

_____

Bankruptcy Rule 8003 acknowledge Assignment in District Court

District Court Case Number 05-22101-CIV-CMA
CLARENCE MADDOX
COURT ADMINISTRATOR / CLERK OF COURT

By:/s/_____
Lisa L. Street, **Deputy U.S.D.C.**
Telephones No: 954-769-5400

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
(Entered on November 10, 2004)

IN RE: Case No. 00-50881- BKC PGH
CHAPTER 13

NOTICE OF DEPOSIT OF FUNDS WITH THE U. S. BANKRUPTCY COURT CLERK

NOTICE IS HEREBY GIVEN THAT:
(XX) The trustee has a balance of $ 4, 681, 64 remaining in her bank account which represents unrepresented checks drawn and mailed to debtor's /creditor (s) in the above named case. Your trustee has made a good faith effort to verify the correct mailing address for said debtor ('s) Creditor (s) and deliver the funds before presenting this notice. More than sufficient time has passed for these checks to be presented for payment.

( ) The trustee has a balance of $ 00 remaining is her bank account which represent small dividends as defined by FRBP 3010.
Attached and made a part of this notice is list pursuant to FRB 3011 of the name, claim numbers and addresses of the debtor (s) creditor (s) and the amounts to which they are entitled.

WHEREFORE, Your trustee hereby gives notice that the above stated sum has been deposited with the clerk of U. S. Bankruptcy Court, Southern District of Florida, to affect closing of the estate.

Date: 11/ 09/ 04 /s/_____
NANCY N. HERKERT
CHAPTER 13 TRUSTEE